IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

WP(C).No. 15278 of 2006(R)

PETITIONER:

NASEEM SHUKUR KHAN,
PART-TIME OFFICIAL RECEIVER, DISTRICT COURT,
THIRUVANANTHAPURAM.

BY ADV. SRI.V.N.ACHUTHA KURUP (SR.)
SRI.BINDU SREEKUMAR
SRI.K.G.RENGANATH

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY, HOME (C) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE REGISTRAR, HIGH COURT OF KERALA,
ERNAKULAM.

***3. A.P. AJAYAN, ADVOCATE,**
S/O. LATE N. PEETHAMBARAN,
AGED 51 YRS, RESIDING AT
' LAVANYA', ATAHZHAMANGALAM,
NEYYATTINKARA.

***ADDL. R3 IS IMPLEADED AS PER ORDER DATED**
09/03/2007 IN IA NO. 3766/07.

BY GOVERNMENT PLEADER SRI. BEJOY CHANDRAN
ADV. SRI.B.JAYASURYA FOR ADDL. R3

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/03/2007, ALONG WITH WPC NO. 153/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 15278/2006 R

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE GO (RT) NO. 3009/2001/HOME DATED 4/09/2001.

EXT.P2. COPY OF THE ORDER NO. D.DIS 20528/57/HD DT. 2/07/57 OF THE GOVT. OF KERALA.

EXT.P3. COPY OF THE O.M. NO. B4/11300/2004(2) DT. 31/5/2004 OF THE R2.

True copy

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A.K. Basheer, J.

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W.P(C)15278/2006 & 153/2007

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Dated this the 23rd day of March, 2007.

J U D G M E N T

Petitioner in these two writ petitions is the part time Official Receiver of District Court, Thiruvananthapuram. It is not in dispute that she was appointed for a period of 5 years in terms of Ext.P1 order dated September 4, 2001. She had assumed charge on October 8, 2001 and her tenure was to expire on completion of 5 years from the above date. On June 12, 2006 towards the fag end of her tenure, petitioner preferred one of these writ petitions viz., W.P.NO.15278/06, contending inter alia that the commission or remuneration fixed in the relevant rules is too meagre and unreaslistic. To be specific, petitioner contended that the provision contained in Rule 4 stipulating that one-half of the commission earned by the Official Receiver in excess of Rs.2,000/- per mensem should be credited to the Government is wholly arbitrary.

2. While the above writ petition was pending consideration before this Court a fresh notification was issued by the District Court, Thiruvananthapuram on July 31, 2006 inviting applications from Advocates practising in the courts in Thiruvananthapuram for appointment to the post of part time Official Receiver since the tenure of the petitioner was due to expire in September -October, 2006. In the said notification a copy of which is on record as Ext.P1 in W.P.No.153/2007, clause 4 reads thus:

> "4. The Part time Official Receiver will be allowed a commission of 5% on the realisation

> subject to a minimum remuneration of Rs.500/- per mensem and if the commission earned by any of the Official Receiver exceeds Rs.300/- per mensem, one half of the excess should be credited to the Government and the other half retained by the Official Receiver."

3. The prayer in W.P.No.153/2007 is to quash the above clause in Ext.P1 notification. There is a further prayer to issue an appropriate direction to respondent No.2, the District Judge, Thiruvananthapuram either to withdraw Ext.P1 or to correct clause 4 of Ext.P1 to the extent that the figure Rs.300/- reads as Rs.2,000/-.

4. As mentioned earlier, the tenure of the petitioner had to expire on October 7, 2006 since she had completed her term of appointment of 5 years. But the petitioner has been continuing in office since fresh selection process had not been completed and mainly by virtue of the interim order issued by this Court in W.P.153/2007, by which all further proceedings pursuant to Ext.P1 had been stayed. It is on record that additional respondent No.4 had been appointed by the Government as the new part time Official Receiver pursuant to Ext.P1. But he has not been able to assume charge because of the above interim order passed by this Court.

5. Having heard learned counsel for the parties and having perused the materials on record, I have no hesitation to hold that the petitioner has clearly abused the process of this Court. As mentioned earlier, petitioner was appointed as part time Official Receiver on the basis of the notification issued by the District Court. It is true that a

typographical error had obviously crept in while issuing the latest notification viz., Ext.P1 in WP.NO.153/2007. Instead of the figure Rs.2000/- in Ext.P1 the figure Rs.300/- had been incorporated.

6. Petitioner, who is a practising lawyer, had applied for the post in response to an identical notification issued by the District Court in which the correct figure Rs.2,000/- was incorporated. Though the petitioner had not produced the said notification in W.P.15278/06, it is pertinent to note that the challenge in the said writ petition was directed against the clause stipulating that one half of the commission earned in excess of Rs.2000/- per mensem be credited to the Government. Therefore the petitioner was very well aware as to what was the remuneration that was being paid to the part time Official Receiver. But due to an apparent oversight or omission the District Court had incorporated the figure Rs.300/- instead of Rs.2,000/- in the latest notification. Petitioner has taken advantage of the said error in the notification and obtained an order of interim stay from this Court.

7. In this context it is also pertinent to note that the petitioner had applied for the post in response to the said notification. It was only when she knew that she had not been selected that she had preferred W.P.153/2007 seeking to quash the relevant clause in the said notification. It is unfortunate that petitioner who is a member of the legal profession has gone to this extent in her anxiety to get appointment as part time Official Receiver. I am constrained to make the above comment for yet another reason. Two impleading applications have been filed by some of the debtors and creditors in an insolvency petition pending before the Subordinate judges' Court, Thiruvananthapuram in which the petitioner had been acting as the

Official Receiver. While one set of the impleading petitioners espouses the cause of the petitioner, the other group has expressed solidarity with the appointing authority. Less said the better about the two rival parties. Suffice it to say that it is unfortunate that some of the members of the legal profession do give room to litigants to create such unpleasant situations.

8. Coming to the merit of the contentions raised by the petitioner in writ petition No. 15278/06, I have no hesitation to hold that they are totally misconceived and untenable. The Government in its wisdom has decided the ceiling limit of commission payable to a part time Official Receiver. If the terms and conditions are not acceptable to a willing candidate, he/she need not apply for the post. In the case on hand, petitioner had challenged the above clause when she had almost completed her full term of 5 years. She had accepted the commission paid at the rate specified in the order of appointment without any demur. It was towards the fag end of her tenure that she had filed this writ petition challenging the clause relating to remuneration. I do not find any irrationality or illegality in the clause in the notification. Therefore the above contention in WP.No.15278/2006 is repelled.

9. As far as the contention raised in W.P.153/2007 is concerned, it has to be held that petitioner is not entitled to challenge Ext.P1 notification for reasons more than one. As noticed earlier, she had applied for the post in response to the said notification. More importantly she was aware of the remuneration which was payable to a part time Official Receiver since she had been holding the same post on the basis of a similar notification issued earlier. Petitioner very well knew that the mistake in the notification was obviously a typographical

one since she had challenged the clause in the earlier notification.

10. Learned Government Pleader who was directed to get instructions from the parties and particularly from the Registrar of this Court has informed the Court that the above inadvertent error had crept in because of oversight. Having perused the materials on record, I have no hesitation to hold that the figure Rs.300/- mentioned in Ext.P1 was undoubtedly a typographical error. In the peculiar facts and circumstances I do not deem it necessary to issue a direction to the District Court to re-notify the post, particularly since the selection process has been completed after considering the application submitted by the petitioner herself along with that of others.

In the above facts and circumstances the writ petitions are dismissed with a cost of Rs.5,000/- each. The cost shall be paid by the petitioner to the High Court Legal Services Committee within 15 days from the date of receipt of a copy of this judgment, failing which it will be open to the Secretary of the said committee to recover the same from the petitioner in accordance with law.

A.K. Basheer
Judge.

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